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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CRL.A. 41/2021**

KRISHAN

.....Appellant

Through: **Mr.Birendra Kumar Mishra, adv.**

versus

STATE OF NCT DELHI

.....Respondent

Through: **Mr.Raghvinder Varma, APP for the
State.**

SI Nirmala

CORAM:

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

ORDER

08.08.2024

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1. The present appeal has been filed challenging the order dated 03.11.2016 passed by the Ld. Additional Sessions Judge-01, (North West), Rohini District Courts, Delhi in Sessions Case No. 171/2014 whereby the appellant has been acquitted from the charges under section 376/506 and section 6 of POCSO Act and has been convicted under section 174A of the Indian Penal Code, 1860 and sentenced to Simple Imprisonment for the period already undergone by him along with a fine of Rs. 1000/- and in default of payment of the fine, further S.I. for a period of 15 days.
2. The brief history of the case is that initially on 03.01.2014 at about 05.20 p.m. a PCR call was made by the brother of the prosecutrix regarding the offence of rape of his sister being committed by the appellant. The said call was recorded as DD No. 39 Bat P.S.



Begumpur. When police reached to the spot, the prosecutrix aged about 14 years, Smt. Phoolmala (aunt of the prosecutrix), Sh. Yashpal (Maternal uncle of the prosecutrix) and Mr. Lalit Kumar (cousin of the prosecutrix) were found present and allegations of sexual assault by the appellant/accused were leveled by them. The police took the prosecutrix to SGM hospital where her medical examination was conducted. In her statement, the prosecutrix alleged that the appellant, who is a neighbor was in visiting terms of her house. On 13.01.2014, the appellant called the prosecutrix through her mama on the pretext of withdrawing money from an ATM and she was sexually assaulted/abused by the appellant. She further alleged that the appellant had earlier committed penetrative sexual assault upon her about 15-20 times when he got an opportunity by putting her under criminal intimidation. On the said statement, an FIR No. 35/14 was registered at PS Begumpur under section 376/506 of the Indian Penal Code, 1860 r/w section 6 of the POCSO Act.

3. The appellant/accused was charged for the offence under section 506 of IPC and section 6 of the POCSO Act and in the alternative under section 376 (2) (f) (n) of IPC. Learned trial court vide order dated 03.11.2016, acquitted the appellant for the offence under section 6 of the POCSO Act as well as Section 376/506 of IPC. The perusal of the record indicates that at the stage of delivering the judgment, it was noted by the learned trial court that the charge under section 174A of IPC had inadvertently not been framed against the accused. The learned trial court framed the charges under section 174A of IPC against the appellant and recorded that the accused has virtually



conceded to the charge as he admittedly remained absconding from 23.01.2014 till 18.08.2014. Thereafter, convicted the appellant for the offence under section 174A of IPC.

4. Before considering the facts and procedure adopted by the trial court while convicting the appellant under section 174A IPC, it would be apposite to go through the relevant provisions of law. Section 174A of IPC reads as under:

“174A- Non-appearance in response to a proclamation under section 82 of CrPC

Whoever fails to appear at the specified place and the specified time as required by a proclamation published under sub-section (1) of section 82 of the Code of Criminal Procedure, 1973, shall be punished with imprisonment for a term which may extend to three years or with fine or with both, and where a declaration has been made under sub-section (4) of that section pronouncing him as a proclaimed offender, he shall be punished with imprisonment for a term which may extend to seven years and shall also be liable to fine.”

5. Keeping in mind the above relevant provisions of law, I consider that the procedure adopted by the trial court is absolutely beyond the purview of law.
6. In the present case there is also a contradiction in the judgment recorded on 03.11.2016 wherein the learned trial court records that the appellant virtually conceded to the charge, whereas in the separate proceedings of the same date on the quantum of sentence, the learned trial court records that the petitioner has pleaded not guilty. It is also recorded by the trial court that the learned defense counsel does not



want to recall the witnesses. The onus was on the prosecution to prove the offence under section 174A IPC in accordance with law. The court is obliged to record a finding that proclamation has been issued and executed under Section 82 Cr.P.C. in accordance with law. There may be a case where there is legal flaw in the issuance and execution of such powers. It is evident that in impugned judgment and order on the quantum of sentence, both dated 03.11.2016, the learned judge has inadvertently or otherwise entirely overlooked the important provisions of the Code of Criminal Procedure and pre-requisites while recording the guilt under section 174 A IPC.

7. Therefore, this court is of the view that the conviction recorded under section 174A of IPC by the learned Additional Sessions Judge is liable to be set aside.
8. In view of the above, the appeal is allowed and the conviction recorded against the appellant is set aside.

DINESH KUMAR SHARMA, J

AUGUST 8, 2024

rb/ht..